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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,637	04/07/2004	Martin Debreczeny	TYHC:0041/FLE (P0396R)	8831

52144 7590 04/02/2008
NELLCOR PURITAN BENNETT LLC
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60 Middletown Avenue
North Haven, CT 06473

EXAMINER

WINAKUR, ERIC FRANK

ART UNIT	PAPER NUMBER
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3768

MAIL DATE	DELIVERY MODE
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04/02/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/820,637	Applicant(s) DEBRECZENY, MARTIN	
	Examiner Eric F. Winakur	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/19/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 January 2008 has been entered.

Claim Rejections - 35 USC § 102

3. The rejection of claims 1 - 4 and 13 under 35 U.S.C. 102(b) as being anticipated by Reynolds (previously cited) is hereby maintained for the reasons of record.

Claim Rejections - 35 USC § 103

4. Claims 5 - 9, 11 - 16, and 18 - 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vari et al. (previously cited) in view of Reynolds for the reasons set forth in the prior Office action.

5. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Vari et al. and Reynolds as applied to claims 5 and 15 above, and further in view of Jeffcoat (previously cited) for the reasons set forth in the prior Office action.

Response to Arguments

6. Applicant's arguments filed 24 January 2008 have been fully considered but they are not persuasive. With regard to the rejections of claims 1 - 4 and 13 based upon Reynolds, Applicant contends that the amendment to the preamble of the claims was sufficient to define over Reynolds since Reynolds is not disclosing a physiological sensor, but rather is directed to a lighting system for photography. However, the amended preamble does not appear to impose any structural limitations on the claimed elements, and those claimed elements remain structurally indistinguishable from those of Reynolds. As such, the rejection is proper and is hereby maintained. Note that because of the amendments to claims 19 and 20 (amending the claims to include a detecting element or step), the rejection of those claims based upon Reynolds has been withdrawn, and replaced with a rejection based upon Vari et al. in view of Reynolds.

With regard to the rejection based upon the combination of Vari et al. and Reynolds or Vari et al., Reynolds, and Jeffcoat, Applicant contends that Vari et al. and Reynolds teach away from one another, and therefore are not properly combinable in the manner suggested by Examiner. While Applicant correctly notes that Vari et al. (random distribution) and Reynolds (ordered distribution) teach alternate manners to achieve a uniform or composite mix of the different wavelengths of light, Applicant's allegation that these different teachings clearly teach away from one another is not supported by the references themselves. That is, there is no teaching in either of the references that the suggested modification was improper. Rather, it is clear from the references themselves that they are disclosing alternate manners to use multiple light sources, transmit the light through optical fibers, and generate mixed light. While both

Art Unit: 3768

references are addressing the problem of how to provide a mixed light output from multiple light sources, each discloses an alternate equivalent solution to this problem. However, there is no teaching in either reference that excludes substitution of the arrangement or method of the other invention for achieving the resulting mixed light output from the sources. As such, the rejections based upon Vari et al. in view of Reynolds and Vari et al., Reynolds, and Jeffcoat are proper.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric F. Winakur whose telephone number is 571/272-4736. The examiner can normally be reached on M-Th, 7:30-5; alternate Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571/272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3768

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768